

## 48A C.J.S. Judges § 220

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VIII. Liabilities

#### A. General Considerations

### § 220. Actions

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#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  36

**An action to enforce the liability of a judge or the sureties on the bond may be instituted in the proper court as soon as liability attaches.**

In the absence of constitutional authorization, constitutional judicial officers of a state are not subject to suit as such, in the courts of such state, without their consent,<sup>1</sup> and judges are exempt from the Federal Tort Claims Act.<sup>2</sup> However, an action against a judge in his or her individual capacity is not barred by the doctrine of judicial immunity.<sup>3</sup> Pursuant to a statute, a judge is not entitled to keep or retain an exhibit or to exercise any dominion over it other than in the judge's official capacity as a judge, and if he or she appropriates the exhibit for his or her own use, he or she may be liable for conversion.<sup>4</sup> Where justified by the facts of the case, an action may be instituted in the proper court as soon as liability attaches<sup>5</sup> and, apart from laches, may be brought within the applicable limitations period.<sup>6</sup> Judicial immunity is an affirmative defense.<sup>7</sup>

***Parties.***

In some jurisdictions, any person aggrieved may sue in his or her own name for any breach of the bond,<sup>8</sup> and under some statutes, the action may be maintained by and in behalf of all persons aggrieved although the bond is made payable to the State.<sup>9</sup>

An action against a judge for damages resulting from negligence in the performance of the judge's duties must be brought against such judge in his or her individual capacity and not in his or her capacity as a judge.<sup>10</sup> Persons whose presence is not essential to the jurisdiction of the court to determine the cause need not be joined as parties.<sup>11</sup>

***Damages.***

As a general rule, sometimes by virtue of statutory provisions, neither the judge nor the surety is liable on the official bond beyond the actual loss sustained on account of the judge's act or failure or refusal to act.<sup>12</sup> If no loss results proximately from the judge's negligence, no recovery can be had against either the judge or the surety.<sup>13</sup>

Neither the judge nor the surety can be held liable for loss resulting from causes for which the judge is not accountable.<sup>14</sup> Except as the statute may provide otherwise,<sup>15</sup> the surety is liable only for damages which may result from the breach and not damages or penalties that may be awarded by way of punishment of the judge.<sup>16</sup>

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**Footnotes**

- 1 N.J.—*Prudential Ins. Co. of America v. Clifton Builders Supply Co.*, 109 N.J. Eq. 349, 157 A. 443 (Ch. 1931).
- 2 U.S.—*Albright v. R. J. Reynolds Tobacco Co.*, 463 F. Supp. 1220 (W.D. Pa. 1979).
- 3 Cal.—*Franklin v. Municipal Court*, 26 Cal. App. 3d 884, 103 Cal. Rptr. 354 (1st Dist. 1972).  
Tenn.—*McAdoo Contractors, Inc. v. Harris*, 222 Tenn. 623, 439 S.W.2d 594 (1969).
- 4 Cal.—*Franklin v. Municipal Court*, 26 Cal. App. 3d 884, 103 Cal. Rptr. 354 (1st Dist. 1972).
- 5 Ala.—*Culver v. Sparkman*, 25 Ala. App. 544, 149 So. 877 (1933).
- 6 Ga.—*Holcombe v. Gunby*, 241 Ga. 105, 243 S.E.2d 65 (1978).

- 7 U.S.—Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974).
- La.—Conques v. Hardy, 337 So. 2d 627 (La. Ct. App. 3d Cir. 1976).
- 8 Ala.—Ex parte Hudgins, 188 Ala. 141, 65 So. 959 (1914).
- 9 S.C.—Fleming v. McLure, 171 S.C. 147, 171 S.E. 804 (1933).
- 10 N.Y.—Luckie v. Goddard, 171 Misc. 774, 13 N.Y.S.2d 808 (Sup 1939).
- 11 Cal.—Oppenheimer v. Ashburn, 173 Cal. App. 2d 624, 343 P.2d 931 (1st Dist. 1959).
- 12 Ky.—Rockcastle County v. Bowman, 274 Ky. 787, 120 S.W.2d 385 (1938).
- 13 Ala.—Rowe v. Johnson, 214 Ala. 510, 108 So. 604 (1926).
- 14 Tex.—McEwin v. Luker, 81 S.W.2d 137 (Tex. Civ. App. Eastland 1935).
- 15 Ga.—National Sur. Corp. v. Gatlin, 192 Ga. 293, 15 S.E.2d 180 (1941).
- 16 Ala.—Mitchell v. McGuire, 244 Ala. 73, 12 So. 2d 180 (1943).

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